

**Decision Notice
and
Finding of No Significant Impact**

Brackett Creek Land Exchange, Donation & Relocation of Roads

August 2004

**USDA – Forest Service
Northern Region
Gallatin National Forest
Bozeman Ranger District**

Gallatin County, Montana

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DECISION SUMMARY

This Decision Notice documents my decision to select Alternative 2, the Proposed Action, as described in the Environmental Assessment (EA) for the Brackett Creek Land Exchange, Donation and Relocation of Roads, issued June 2, 2004.

The involved lands and roads are located in the Brackett Creek and Cache Creek area of the Bridger Mountains, approximately 13 air miles northeast of Bozeman, Montana. All lands are in Gallatin County. In this proposal, the United States would convey approximately 602.9 acres of National Forest System (NFS) lands, and the U.S. would acquire a total of approximately 713.6 acres of non-federal lands. Sacagawae Meadows Ranch, L.P. ("SMR"), is offering the non-federal lands to the U.S. by exchange and by donation. Within this proposal, SMR would also relocate two existing National Forest roads currently routed through private lands onto consolidated NFS lands.

The federal lands and non-federal lands identified for exchange and donation have been appraised in accordance with federal standards. All appraisal reports were completed by Kim Colvin, ARA of Norman C. Wheeler and Associates. All reports were reviewed by Forest Service Qualified Review Appraiser, Kimball Frome, and approved by Regional Review Appraiser, John P. Hickey, ARA.

In September 2001, appraisal reports for the identified federal lands and non-federal lands were completed. Both reports were approved on September 13, 2001. A supplement to the 2001 appraisals was completed in September 2002. The supplement was reviewed September 23, 2002 and approved October 16, 2002. A second supplement to the approved appraisals was completed August 12, 2003, and reviewed and approved November 18, 2003. The current appraisals remain valid until August 12, 2004.

The current estimated market value of the non-federal lands identified for exchange and donation, which in total consist of 713.6 acres, is \$1,785,000. The current estimated market value of the federal lands, which in total consist of 602.9 acres, is \$1,510,000.

The land-for-land exchange will be completed on the basis of equal market values. The "per-acre" value of the federal and non-federal lands was determined to be equal in the approved appraisals. Consequently, SMR will convey 602.9 acres of non-federal lands, with a value of \$1,510,000 to the U.S. in exchange for 602.9 acres of federal lands with a value of \$1,510,000. In addition, as a separate transaction, SMR will also donate 110.7 acres of non-federal land to the United States.

The exchange will be completed in accordance with the General Exchange Act of 1922, as amended, the Federal Land Management and Policy Act of 1976, as amended, and the Federal Land Exchange Facilitation Act of August, 1988. The donation will be completed in accordance with the Act of October 10, 1978.

I am the responsible official for this project. The scope of my decision is limited to the actions described in the EA and this Decision Notice and Finding of No Significant Impact ("DN/FONSI"). This decision is site-specific.

Please refer to maps of the identified lands and roads in **Appendix A**.

Table 1 - Legal descriptions of the Federal and non-Federal lands to be exchanged.

SMR will convey to the U.S., by exchange and by donation, the following non-federal lands, including mineral estate:	The U.S. will exchange to SMR the following federal lands, including mineral estate:
<p>Gallatin County, Montana</p> <p><u>By Exchange:</u></p> <p>T. 2 N., R. 7 E., P.M.M. Section 31: Lots 1 and 2, E$\frac{1}{2}$NW$\frac{1}{4}$ and NE$\frac{1}{4}$</p> <p>T. 1 N., R. 7 E., P.M.M. Section 7: S$\frac{1}{2}$S$\frac{1}{2}$ and S$\frac{1}{2}$N$\frac{1}{2}$S$\frac{1}{2}$ Section 5: Tract 1A of Certificate of Survey _____*</p> <p>Total: 602.9 acres, more or less.</p> <p><u>By Donation:</u></p> <p>T. 1 N., R. 7 E., P.M.M. Section 5: Tracts 1B, 2 and 3 of Certificate of Survey _____*</p> <p>Total: 110.7 acres, more or less.</p> <p>* SMR will finalize the Certificate of Survey (COS) describing the non-federal lands in Section 5, and file the COS in the records of Gallatin County prior to or at closing.</p>	<p>Gallatin County, Montana</p> <p>T. 1 N., R. 7 E., P.M.M. Section 6: S $\frac{1}{2}$</p> <p>T. 2 N., R. 7 E., P.M.M. Section 20: Lots 5, 6, 8, 9, 10, 11, 13 and S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$</p> <p>Total: 602.9 acres, more or less.</p>

PROJECT BACKGROUND

Since at least the late 1940's, the Forest Service has identified the non-federal lands in the Brackett Creek area for potential public acquisition. In 1948, the Forest Service was in the process of purchasing these lands, when the owner discontinued negotiations and sold the lands to another private party. That party established the Hammersmark Ranch Company (HRC). HRC owned these lands for decades, and managed the lands primarily for timber and livestock grazing.

During the 1950's and 1960's, HRC and the Forest Service discussed possible consolidation of the intermingled lands in the Brackett Creek area. However, no exchange was made. In the early 1990's, discussions were again initiated. For several years, the Forest Service and HRC considered various exchange proposals, before reaching agreement on one proposal in 1997.

In 1997, the Forest Service and HRC signed an Agreement to Initiate (ATI) and began the exchange process. In 1998, as work on that exchange proposal was underway, HRC sold its lands in the

Brackett Creek area to John Neerhout, who then incorporated the lands into Sacagawae Meadows Ranch L.P. (SMR). SMR continued discussions with the Forest Service. The current exchange proposal resulted from those discussions. Although similar in many respects to the prior exchange proposal with HRC, the parties made some adjustments to the lands considered for exchange.

SMR and the Forest Service entered into a new ATI in June 2000. The Forest Service (Northern Region Director of Recreation, Minerals, Lands, Heritage and Wilderness) and SMR (John Neerhout) signed the current ATI.

Following further study of the specific parcels of land considered for exchange in Section 5, T1N, R7E, the parties agreed to amend the ATI in July 2002 (Amendment #1). The primary purposes of Amendment #1 were to modify the configuration of the SMR lands in Section 5 in order to create a more logical boundary following an exchange, and to protect additional riparian and wetland areas along Brackett Creek.

In June 2003, the parties agreed to amend the ATI again (Amendment #2). The purpose for Amendment #2 was to revise and strengthen the deed restrictions for protecting wetlands and floodplains located on the federal lands in the exchange. Amendment #2 also updated the implementation schedule.

In May 2004, the parties agreed to amend the ATI again (Amendment #3). The purpose for this third amendment is: (1) to correct the length of reconstruction and gravel work needed for South Fork Brackett Road #631; (2) to clarify the trailhead location associated with the proposed North Fork Brackett Creek Road, and the length of construction and gravel work needed to access the trailhead, and (3) to delete a provision for the Forest Service to grant an easement to SMR for a road that would extend from Highway 86 across NFS land to SMR land in Section 5. Road access to Section 5 is already available from the Brackett Creek county road.

PURPOSE AND NEED

The purpose and need is to consolidate the intermingled land ownership in the Brackett Creek and Cache Creek area to improve long-term management effectiveness, to protect and maintain public access to National Forest System (NFS) lands, to reduce conflicts with public use of intermingled private lands, and to protect fish, wetlands and riparian areas.

The federal lands considered for exchange are within Management Area (MA) 8. These lands are primarily suitable for timber management. The non-federal lands identified for exchange and for donation adjoin NFS lands within MA 8 and MA12. MA 12 consists of lands suitable for wildlife habitat and dispersed recreation

PROPOSED ACTION

The Proposed Action, **Alternative 2**, is described in detail in the EA, and later in this document. A summary of the Proposed Action is below:

In **Alternative 2**, the U.S. would acquire fee title, including mineral estate, to 713.6 acres of non-federal lands from SMR. The non-federal lands include **602.9 acres** offered for exchange and **110.7**

acres offered by donation, for a total of **713.6 acres**. The U.S. would convey fee title, including the mineral estate, to approximately **602.9 acres** of federal land to SMR.

Alternative 2 is designed to provide for reasonable, uncontested public and administrative access to consolidated NFS lands in the Brackett Creek area.

Alternative 2 would also provide legal road access to consolidated SMR lands.

SCOPE OF THE DECISION

The scope of the decision is limited to selecting Alternative 1 or Alternative 2 described above. The decision reached at the conclusion of this analysis would be effective upon completion of the formal land exchange process.

The responsible official for this Decision is the Forest Service, Northern Region, Director of Recreation, Minerals, Lands, Heritage, and Wilderness, whose authority is delegated by the Regional Forester.

PUBLIC INVOLVEMENT

Legal notice of the proposed Brackett Creek Land Exchange was published in the Bozeman Daily Chronicle newspaper (Bozeman, MT) on four consecutive weeks, on December 1, 7, 15, and 21, 2000. The Daily Chronicle is the newspaper of record for the Gallatin National Forest, as listed in the Federal Register, and it is the newspaper of general circulation in Gallatin County.

The Forest Service mailed a Notice of the proposed land exchange to a list of interested agencies and parties. The Forest Service has included the proposal in the Quarterly NEPA Project List for the Gallatin National Forest, beginning in spring 1999. The project list has continued to identify the proposal since that time, to notify the public of its status.

Scoping, the process of refining the proposed action, determining the responsible official and lead and cooperating agencies, identifying preliminary issues and identifying interested and affected persons, was completed in 2001.

The Bozeman Ranger District sent a letter (February 28, 2001) to interested parties, developed in part through response to the project listing, requesting comment as part of the environmental analysis process. Six interested parties responded. Copies of external scoping efforts are in the project file.

Internal scoping involved consulting with key specialists on the Bozeman District and in the Forest Supervisor's Office. Copies of specialist comments are in the project file.

An interdisciplinary team (IDT) was created to coordinate the scoping process and assist in identification of issues and development of alternatives in response to the issues.

Through scoping, the Forest Service identified issues, including three key issues, and developed one alternative to the proposed action. The alternatives were analyzed in detail, and the environmental effects were disclosed in an EA issued June 2, 2004. Legal notice of the EA was published in the

three papers of record including the *Missoulian* (Missoula, MT), the *Billings Gazette* (Billings, MT) in the *Great Falls Tribune* (Great Falls, MT) on June 2, 2004. A legal notice was also published in the Bozeman Daily Chronicle on June 2, 2004. A total of 26 parties received copies of the EA. In addition, the entire document was available on the Gallatin National Forest's website.

Two comments were received in response to the EA within the comment period deadline. Comments on the EA are summarized in the Response to Comments section in this Decision Notice and are available in the project record.

ISSUES

During the scoping process, the public expressed some concerns and posed several questions regarding the proposal and the analysis, and requested alternatives to the proposal be analyzed. The three key issues listed below were addressed in the EA.

Issue #1 – *The proposal could affect long-term management effectiveness of NFS lands in this area.*

Given the intermingled nature of the federal and private ownership, and the changing private land uses in the Brackett Creek and Cache Creek areas, significant concern exists about effectively managing the NFS lands in this area for multiple use purposes in the future. These uses include recreation, wildlife and fisheries, watershed, livestock grazing, management of vegetation and fire protection.

Intermingled parcels of NFS land, surrounded by private lands, are difficult for the Forest Service to manage in the long-term. Conflicts with private lands often occur, particularly when ownership changes and permanent development takes place on the private lands.

Consolidated blocks of NFS land are typically much more manageable in the long-term. Potential conflicts with private land uses and developments are often reduced when NFS lands are consolidated and not intermingled.

Another key factor in improving management effectiveness of NFS lands is the ability to establish and maintain reasonable and uncontested access to those NFS lands.

The environmental analysis addresses the effects of the alternatives on the effectiveness of managing NFS lands in this area for multiple use purposes in the future.

Issue #2 – *The proposal could affect public and administrative access to NFS lands, and it could affect public trespass on SMR land.*

Given the intermingled ownership, changing private landowner goals and land uses in the Brackett Creek area, there is significant and growing concern about maintaining reasonable, uncontested access to NFS lands.

In the current ownership configuration, it is often difficult for public users to know whether they are actually on NFS land or private land. As recreational use of this area continues to grow, this situation will likely result in more trespass on private land, and growing conflicts between management of intermingled NFS and SMR lands in this area.

Previous owners of the SMR lands were less concerned about public use of their land. But landownership goals are changing. With increasing public recreational use, trespass problems on private land, and a desire for solitude and privacy, SMR (and other owners in the area) are become less tolerant of public use across private lands.

The environmental analysis addresses the effects on public and administrative access to NFS land as well as unwanted public trespass on private land, associated with changing the NFS and SMR land ownership configuration in the Brackett Creek and Cache Creek areas.

Issue #3 - The proposal could impact the watershed, including water quality, fisheries and amphibian habitat in this area.

The environmental analysis addresses the potential impacts on floodplains, wetlands and water-based habitat associated with changing the federal and non-federal (SMR) land ownership configuration in the Brackett Creek and Cache Creek areas. The analysis addresses the effects on sensitive species, the Yellowstone cutthroat trout, the leopard frog and the boreal toad, that may be present in all or parts of the watersheds examined. The environmental analysis describes the floodplains/wetlands within the tracts, and water quality that might be affected, and the possible effects of the alternatives.

Table 2 on page 11, “Comparison of the Effects of the Alternatives According to the Key Issues”, summarizes the issues and the consequences of the alternatives relative to the issues.

Other concerns expressed during scoping are described in the EA (March 2004).

ALTERNATIVES NOT CONSIDERED IN DETAIL

I considered eight alternatives for the proposed land exchange. These are described in detail in the EA (June 2, 2004). Two alternatives were considered in detail: Alternative 1 – No Action, and Alternative 2 – Proposed Action (Land Exchange, Donation and Road Relocation). Six additional alternatives were considered, but not analyzed in detail, including:

A. Forest Service purchase the SMR lands with Land & Water Conservation Fund (“LWCF”) funding.

The Neerhout family (SMR) purchased the private land in the Brackett Creek area from Hammersmark Ranch Company (HRC) specifically to develop and maintain a family retreat for recreational purposes.

SMR was aware of the exchange proposed by their predecessors with the Forest Service, and SMR elected to pursue that exchange. The Neerhout family has made it clear that they do not wish to sell their property to the Forest Service or to other parties. Refer to a December 20, 2000 letter from SMR President John Neerhout to the Forest Service.

Also, the SMR lands in the Brackett Creek area would likely not be competitive for very limited LWCF funding, in comparison to lands near Yellowstone National Park that offer nationally-significant wildlife habitat, endangered species habitat and other values.

For these reasons, the purchase alternative was not further considered.

B. Request or require that SMR place a conservation easement, or similar restrictions on the NFS land identified for exchange, and on other SMR lands.

Concerns about future management and potential permanent development of the SMR lands were identified in the scoping process.

In response to this concern, SMR President John Neerhout wrote a letter to the Forest Service (December 20, 2000) briefly describing his plans for the SMR lands. The SMR owners plan to construct five family residences, a caretaker's house, a barn and corrals. His stated vision is that SMR will be a "family retreat for recreational purposes, surrounded by natural habitat."

In addition, the Forest Service would place permanent deed restrictions on the federal land in Section 6 proposed for exchange, to provide long-term protection of wetlands, floodplains, native trout and amphibian habitat, and a known cultural resource site. No other protective covenants are warranted to comply with legal and regulatory requirements, executive orders, policy, or to meet Forest Plan management objectives.

The Forest Service has suggested that SMR consider voluntarily placing a conservation easement on its lands, and discussed the concept on several occasions with the owners of SMR. To date, SMR has expressed some interest, but has not been willing to commit to placing an easement on its lands, nor on the lands to be conveyed to SMR in an exchange. SMR has expressed a desire to consider a potential conservation easement grant only after it has had an opportunity to assess in detail the best use of the property to accommodate its long term goals.

It is also not likely that the Forest Service would be able to secure funding to purchase a conservation easement on the SMR lands.

For these reasons, the conservation easement alternative was not further considered in this assessment.

C. Consider different land adjustment proposals in Section 5.

The Forest Service and SMR considered several objectives, and several conceptual alternatives, before developing the current land adjustment proposal in Section 5.

One objective was to place the Battle Ridge Station Road #326 entirely on NFS land. Currently that road crosses SMR land in Section 5. A second objective was to accommodate SMR's desire to retain a strip of land along the west side of Highway 86 to build a driveway that SMR will use in the future to access its residences.

A third objective was to establish a well-defined boundary to assist public use of NFS lands in this area. A fourth objective was for the Forest Service to acquire the wetland and riparian areas now located on private land along Brackett Creek in Section 5.

One alternative that was initially identified involved use of "aliquot part" parcels in Section 5. That would have created a "stair-step" ownership configuration along Highway 86. After more careful study, the parties agreed that using the State highway (a fee strip) and the Brackett Creek County

Road as the boundaries for the exchange of land in Section 5 would create a more manageable and logical management situation. Therefore, this alternative was not considered further.

D. Include SMR land in Section 33 in the Battle Ridge area in the exchange proposal.

SMR proposed this alternative several years ago. SMR owns land in the south half of Section 33, T2N, R7E in the Battle Ridge area. Other private land surrounds this parcel. This option was not studied in detail because the parcel is not contiguous to any other NFS lands, nor is it accessible to the public.

Also, the Forest Service would need to identify additional NFS lands for exchange to acquire the Battle Ridge parcel from SMR, and no other NFS lands were available for exchange in this area. Therefore, this alternative was not considered further.

E. Retain easements across SMR lands for existing Central Camp Road #6607 and Middle Fork Brackett Road #6948.

This alternative was initially considered and evaluated by the Forest Service, and discussed with SMR representatives in detail. In this alternative, public and administrative access to NFS lands following the exchange would remain on the Central Camp and Middle Fork Brackett Roads across SMR lands, and no replacement road facilities would be built.

The fundamental concern with this alternative is that public users would need to travel two miles or more on roads across private (SMR) land before reaching NFS land. That situation would not address or alleviate the growing problem of unauthorized public use and trespass on the intermingled private lands.

Additionally, this alternative was not further considered because it is not acceptable to SMR. SMR entered into the exchange proposal with the understanding that by replacing these two roads with in-kind facilities on consolidated NFS lands, the Forest Service would then terminate its interest in the two existing roads.

F. Develop the Two Proposed Replacement Access Facilities as Trails, not Roads.

In developing the exchange proposal, the Forest Service and SMR also initially considered this alternative. In this option, the two proposed replacement national forest access facilities – North Fork Brackett Road #6607 and South Fork Brackett Road #631/631A would be built as trails, not roads.

The primary concern with this alternative is that long-term administrative (agency) road access is definitely needed to manage the consolidated NFS lands in the Brackett Creek area. Road access is needed to meet Forest Plan goals and objectives for timber, fire and fuels management, and other multiple use purposes.

Road access also provides management flexibility in providing for recreational uses. The replacement North Fork Brackett Road would be managed as open to motor vehicles to a designated trailhead, and then managed as a trail beyond that point. In the winter, the road would be managed as open to snowmobile use. Replacement South Fork Brackett Road #631/631A would be managed as seasonally open to vehicle travel.

If the two replacement access facilities were to be built only as trails, then the Forest Service would need to retain permanent administrative access rights (easements) on the existing Central Camp Road #6607 and Middle Fork Brackett Road #6948 across SMR lands to access the consolidated NFS lands. That creates a less desirable long-term access situation both for SMR and the Forest Service. Therefore, this alternative was not further considered.

G. Place deed restrictions on the federal land in Section 20 proposed for exchange.

In the proposed exchange, the Forest Service and SMR reached agreement to place deed restrictions on the federal land to be conveyed to SMR in Section 6 in Brackett Creek. These deed restrictions are meant to provide long-term protection of wetlands, floodplains, native trout habitat, and a known cultural site. In developing and analyzing the exchange proposal, the Forest Service also discussed with SMR the concept of placing deed restrictions on the federal land to be conveyed to SMR in Section 20 in Cache Creek area.

SMR has indicated that, following an exchange, SMR may elect not to retain the Section 20 parcel, and instead may offer it for sale. SMR did not agree to apply deed restrictions to Section 20.

No other protective covenants are warranted to comply with legal and regulatory requirements, executive orders, policy, or to meet Forest Plan management objectives.

For these reasons, this alternative was not further considered.

ALTERNATIVES CONSIDERED IN DETAIL

Two alternatives were considered in detail, **Alternative 1 – No Action**, and **Alternative 2 – (Proposed Action) Land Exchange, Donation and Relocation of Roads**.

In making my decision, the primary factors I considered were how well each alternative met the purpose and need for the proposal, how each responded to the three key issues identified through scoping, and public comments received on the EA. I also considered how best the resource values and public objectives served by the non-federal lands to be acquired equal or exceed the resource values and the public objectives served by the federal lands to be conveyed. I gave full consideration to the opportunity to achieve better management of federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives. A detailed summary of the issues and the consequences of the alternatives relative to the issues appear below, and in the EA.

Alternative 1 - No Action alternative would maintain the private inholding of the SMR lands within the national forest boundary

Alternative 2 – (Proposed Action) would complete the proposed land exchange, land donation and road relocations. The SMR lands would become part of the Gallatin National Forest and be managed under the 1987 Forest Plan, and any future revisions.

ENVIRONMENTAL CONSEQUENCES

Table 2 summarizes the effects of the alternatives discussed in the EA (March 2004).

TABLE 2 - COMPARISON OF THE EFFECTS OF THE ALTERNATIVES ACCORDING TO THE KEY ISSUES

Issue	Alternative 2 (Proposed Action)	Alternative 1 (No Action)
<p><i>Issue #1 – The proposal could affect long-term management effectiveness of NFS lands in this area.</i></p> <p>Measures:</p> <ul style="list-style-type: none"> * Change in acres of NFS lands that have reasonable, uncontested public and administrative access. * Change in miles of NFS and private land boundary (Indicator for consolidating NFS land into a more manageable configuration). 	<p>Alternative 2 would result in a net gain of 393.62 acres of consolidated NFS lands that have reasonable access. /1/</p> <p>/1/ Alternative 2 would add a net of 110.7 acres to the National Forest. All acquired lands would have reasonable public access. The NFS land in Section 20 does not have reasonable access.</p> <p>Alternative 2 – the proposed land exchange and donation-would result in a net reduction of approximately 6.45 miles of common property line between NFS lands and SMR lands.</p>	<p>Alternative 1 would have no change in acres having reasonable access.</p> <p>Alternative 1 would not change the miles of NFS and private land boundary.</p>
<p><i>Issue #2 – The proposal could affect public and administrative access to NFS lands, and could affect trespass on SMR land.</i></p> <p>Measures:</p> <ul style="list-style-type: none"> * Change in miles of national forest access routes (system roads and trails) located on NFS lands. * Change in miles of national forest access routes crossing private (SMR) lands. (An indicator for the amount of potential trespass/conflict). 	<p>In comparison to No Action, Alternative 2 would increase the amount of access roads located on consolidated NFS land by an estimated 5.0 miles.</p> <p>Alternative 2 would reduce the amount of access roads located on consolidated SMR lands by an estimated 7.6 miles,</p>	<p>Alternative 1 would not change the amount of national forest access routes located on NFS lands.</p> <p>Alternative 1 would not change the amount of national forest access routes located on SMR lands.</p>

Issue	Alternative 2 (Proposed Action)	Alternative 1 (No Action)
<p><i>Issue #3 - The proposal could impact the watershed, including water quality, fisheries and amphibian habitat in this area.</i></p> <p>Measures:</p> <ul style="list-style-type: none"> * Change in protected acres of floodplains and wetlands. * Change in protected acres of wetlands that provide Yellowstone Cutthroat trout and amphibian habitat. 	<p>Alternative 2 would result in a 2.06-acre net increase in floodplains, and a 6.6-acre net increase in wetlands located on federal lands. The wetlands provide Yellowstone Cutthroat trout and amphibian habitat.</p> <p>In addition, the Forest Service would place a deed restriction on the NFS land in Section 6 to protect 20.1 acres of riparian areas, Yellowstone cutthroat trout and boreal toad habitat.</p>	<p>Alternative 1 would not change the acres of protected floodplains or wetlands. Alternative 1 would not change the acres of wetlands that provide Yellowstone Cutthroat trout or amphibian habitat.</p> <p>Also in Alternative 1, no deed restriction would be placed in Section 6.</p>

PUBLIC COMMENTS

All comments were placed in the project record as they were received. During the scoping period, there were six respondents. The content of the comments was analyzed, and the interdisciplinary team responded to the comments in identification of issues for the environmental analysis, and in considering their analysis of the environmental effects of the alternatives. During the comment period for the June 2004 EA, two comments were received by the comment period deadline. All comments are available for review in the project record at the Bozeman Ranger District Office.

RESPONSE TO PUBLIC COMMENTS

Two letters were received by the comment deadline on the EA. Generally, the questions and concerns brought forward by the respondents were addressed in the EA. One comment was in favor of the proposed action. This commentator believes the proposed land exchange will enhance the recreational management of the area as well as the quality of the recreational experience.

The second commentator raised several concerns about the proposed action. Individual comments and responses to the comment follow:

Comment:

Consolidation would enhance the potential financial worth of the private land; making the exchange not equitable.

Response:

The public and the Forest Service expressed concerns about future management of the existing SMR lands and also the NFS lands considered for exchange to SMR. The EA discussed the foreseeable future use of SMR Lands. John Neerhout, President of SMR, described his vision and future plans for the SMR property in a December 20, 2000 letter to the Forest Service. Based on Mr. Neerhout's letter, following is a summary of SMR's future plans:

- SMR's overall goal is to have a family retreat for recreational purposes, surrounded by natural habitat. This plan is apparently similar to the current management of Mr. Neerhout's northern California ranch (caretakers house, main house, guest house, barn and corrals; grazing primarily for fuels reduction; no hunting; property mainly kept in natural habitat while surrounding properties have been turned into vineyards or housing).
- SMR would construct up to six houses, a barn, and horse corrals in the next 20 years, in reasonably close proximity to each other, most likely within the north half of Section 6 (south-facing slopes).
- Following an exchange, SMR may sell the former NFS land in Section 20. The land in Section 20 would likely continue to be used for livestock grazing and possible timber harvesting. Considering current access limitations, other land uses may be less likely.

On April 23, 2004, Mr. Neerhout verbally stated to the Forest Service that if the proposed action did not occur, that in addition to developing a family retreat, SMR would likely seek to recover its initial investment by developing more residences along the access roads that cross the existing SMR lands.

In Alternative 2, it is reasonable to anticipate that after an exchange, SMR would manage its consolidated lands primarily as a family retreat for recreational purposes. It is also anticipated that SMR would eventually sell the current NFS land in Section 20. A moderate level of timber management and livestock grazing would also likely continue on these lands.

In Alternative 1, it is anticipated that SMR would manage at least part of its existing lands primarily as a family retreat for recreational purposes. Mr. Neerhout recently stated that in "No Action", SMR would also consider further development to recoup investment costs. He stated that, in addition to a family retreat, SMR would likely develop residences along access roads crossing existing SMR land. Also, SMR would likely take steps to clearly delineate its property boundaries, including signing, fencing and security patrols. The EA further addresses this matter.

SMR's developments would obviously be confined to its existing private lands. This is considered the most likely scenario, and is the presumed course of action, if the proposed action does not occur.

It is also distinctly possible that SMR may elect to sell its private lands, or some portion of its lands. In considering SMR's goals, the current intermingled ownership pattern and Forest Service road access situation makes SMR's management of the private lands relatively difficult and costly. Chapter II, page 5 further addresses this matter.

SMR could sell its holdings if the access issues were not resolved and the exchange did not occur. A future owner could decide to more intensely develop the land, including subdivision and a golf course. Ongoing sales and development of former ranches in Gallatin County show this is very possible. On the other hand, a potential future owner may decide on limited development, similar to what SMR envisions.

Under Alternative 2, the landowner has stated a goal to manage the SMR lands primarily to retain open space and wildlife habitat. It is anticipated that SMR would build its planned developments on existing SMR land in Section 5 and 6. In Alternative 1, additional residential development along roads may occur, beyond what is currently planned.

The federal lands and non-federal lands identified for exchange and donation have been appraised in accordance with federal standards. The proposed land-for-land exchange would be completed on the basis of equal market values. The “per-acre” value of the federal and non-federal lands was determined to be equal in the approved appraisals. Consequently, SMR would convey 602.9 acres with a value of \$1,510,000 to the U.S. in exchange for 602.9 acres of federal lands with a value of \$1,510,000. In addition, as a separate transaction, SMR would also voluntarily donate 110.7 acres of the non-federal land to the United States

Comment:

The north half of section 6 should be purchased.

Response:

The Neerhout family (SMR) purchased the private land in the Brackett Creek area from Hammersmark Ranch Company (HRC) specifically to develop and maintain a family retreat for recreational purposes.

SMR was aware of the exchange proposed by their predecessors with the Forest Service, and SMR elected to pursue that exchange. The Neerhout family has made it clear that they do not wish to sell their property to the Forest Service or to other parties.

Comment:

Tract 2 and the south half of section 7 should be obtained by exchange for the south part of section 21.

Response:

The south half of section 21 is not a part of this proposal. Obtaining the south half of section 7 and Tract 2 as offered by SMR are parcels the Forest Service is interested in obtaining. The parcel is section 7 would enhance recreational opportunities by providing public access all on national forest system lands. Tract 2 would provide an increase in federally owned wetlands and floodplains as well as a net gain of trout and amphibian habitat. The EA, Chapters 2, 3, and 4, contains a more detailed description of the SMR lands in Section 7 and Section 5.

SMR has indicated that, following an exchange, SMR may elect not to retain the Section 20 parcel, and instead may offer it for sale. If the commenter is referring to NFS land in section 20 as part of the exchange to SMR for the parcels in section 7 and Tract 2, SMR would not be interested. It would not meet their stated intent to have a family retreat for recreational purposes, surrounded by natural habitat.

Comment:

New roads are not necessary for this exchange. Replacement roads are not necessary. Existing roads should be closed to motorized travel. Elimination of motorized access in these areas would help protect wildlife (wolverine) as well as riparian areas. Recreation is more important than resource extraction. It is not clear how SMR ownership of riparian corridors will provide more protection than will Forest Service ownership along with road closures.

Response:

The EA discusses in detail the relocation and reconstruction of roads. In the Proposed Action, the amount and types of recreational uses in the Brackett Creek and Cache Creek areas are anticipated to remain approximately the same when compared to the No Action Alternative. However, it is anticipated recreation use would be shifted onto consolidated NFS lands, and less to intermingled

SMR lands. Hiking, hunting horse riding, camping, winter sports, mountain biking, ATV use, and recreational shooting would continue. Some new areas would legally be available on consolidated NFS lands, but some traditional areas (on SMR lands) would likely be closed in the future.

Several national forest access routes cross through both the private and federal lands included in this exchange proposal. The area is well known for its dispersed winter activities, including snowmobiling and cross-country skiing. It is also used throughout the summer months for hiking and mountain biking. The trails are open to motorized trail use. The previous landowners allowed the public to use their lands off of these access routes. The general public cannot currently differentiate between private and public lands. For years the land has been open to recreation use. If the exchange occurs, the national forest lands in section 6 will be no longer available for recreation use. There will be a loss of riparian ski area along Middle Creek and North Creek. Recreationists, including cross-country skiers will still be able to travel by foot from Highway 86 to the crest and connect with the Bridger Foothills trail #534. The route will be located entirely on national forest system lands, including skiing terrain along the South Fork if the exchange proceeds thus ending uncertainty about access.

The Forest Plan includes a plan for recreation experience opportunities. The Forest Plan also allocates land for non-recreational uses, including “extractive”. Forest uses may be updated as part of the Forest Plan Revision. The Forest is currently reviewing travel planning on the Forest. An EIS will be released to the public shortly. An opportunity to comment on motorized recreation is provided through the Travel Plan EIS. Motorized recreation use is outside the scope of this proposal.

Based on comments relative to wildlife concerns, refer to the Biological Assessment (BA) in Appendix J of the EA. The BA discusses the effects the proposed action will have on wildlife species occurring on the Brackett Creek Land Exchange. Under the provisions of the federal Endangered Species Act (PL 93-502, as amended), federal agencies are required to complete a Biological Assessment (BA) to insure that proposed actions are not likely to jeopardize the continued existence of species which are federally classified as **threatened or endangered** (T&E) or adversely modify their critical habitat. In addition, a Biological Evaluation (BE) is required to determine how a proposed action may affect any **sensitive** species. A sensitive species is defined as a plant or animal species, identified by the Regional Forester for which continued persistence of well distributed populations on National Forest lands, is a concern. Forest Service direction for sensitive species management entails developing and implementing practices to ensure that species do not become threatened or endangered because of Forest Service actions (FSM 2670.5). This document provides a combined Biological Assessment and Biological Evaluation for the action proposed. In addition, management indicator species and other wildlife species identified as important to this analysis are discussed. This proposal would have “no impact” on wolverine.

Alternative 2 would create a net gain of 6.6 acres of wetlands and 2.1 acres of floodplains under federal protection guidelines. Riparian areas on NFS lands conveyed to SMR in Section 6 would be protected by deed restriction, for 100’ on each side of the North and Middle Forks of Brackett Creek. SMR must comply with applicable federal (including Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands), state and local regulations. The Forest Service or authorized representative also reserves the right to inspect for violations of the above, as well as monitor and manage the associated fish populations and habitat.

Chapter 4 of the EA discusses effects of the proposed land exchange, donation, and road relocation on resources. Further information is also found in Appendices A and B (Agreement to Initiate and Amendments).

Comment:

Why is the Bozeman Chronicle not included in the newspapers of record?

Response:

The USDA Forest Service is the lead agency for this analysis. The Responsible Official is the Forest Service Northern Region Director of Recreation, Mineral, Lands, Heritage, and Wilderness, whose authority is delegated by the Regional Forester. The Regulations relative to the National Environmental Policy Act (NEPA) require the responsible official to publish the legal notice in the newspaper of record. 36 CFR 215.5(a) states: "Annually, each Regional Forester shall, through notice published in the Federal Register, advise the public of the principle newspapers to be utilized for publishing notices required by this section." 36 CFR 215.9 requires the publication of decisions in the newspaper of record. The RO has three newspapers of record for decisions in Montana.

Since this project is located near Bozeman, the Forest also included a copy of the legal notice in the Bozeman Daily Chronicle to better reach interested parties. It was published on the same date as the 3 newspapers of record and stated that the 3 newspapers of record were also publishing the legal notice.

THE SELECTED ALTERNATIVE

The selected alternative is **Alternative 2**, described above as the Proposed Action. SMR will convey to the U.S. approximately 602.9 acres of non-federal lands needed to balance the appraised values of the federal and non-federal lands in the exchange. In a second and separate transaction, SMR would also donate, as a gift, an additional 110.7 acres to the U.S. In total, SMR would convey the fee title interest, including minerals, to approximately 713.6 acres of land to the U.S. The acquired lands will be added to the national forest system and managed and monitored in accordance with the 1987 Gallatin National Forest Plan. The acquired non-federal lands in this area will be managed in accordance with Forest Plan MA 8 and 12 with primary objectives for timber, wildlife, and dispersed recreation.

The United States will convey fee title interest, including mineral estate, to approximately 602.9 acres of federal land to SMR. These lands would no longer be subject to the Forest Plan, nor subjected to future land management plans that may be developed for the national forest under the National Forest Management Act. It is expected that SMR will manage its consolidated lands primarily as a family retreat for recreational purposes, surrounded by natural habitat, with some other activities possible as described earlier.

Alternative 2 will include the following mitigation and monitoring requirements:

- Exchange of access rights between the two parties. (See EA, Appendix A, ATI.)
- Use of deed restrictions to protect key resources (floodplains, wetlands, Yellowstone Cutthroat trout habitat, and a cultural resource site), including the right to monitor the sites. (See EA, Appendix A & B.)
- Use of Best Management Practices (BMPs) for roadwork to protect watershed and other resource values. (See EA, Appendix E.)

- Use of noxious weed BMPs for roadwork to prevent the introduction or spread of noxious weeds, including monitoring. (See EA, Appendix F.)
- Use of timing restrictions for road construction to minimize impacts. (See EA, Appendix G.)
- Use of proper culvert (CMP) sizing for fish and amphibian passage, and use of amphibian surveys of road locations. (See EA, Appendix H.)
- Installing cattle guards and drift fences for control of cattle, if monitoring indicates need. (See EA, Appendix I.)
- The Forest Service will adopt Public Use Restrictions for all Non-federal lands to be acquired in Section 5. These restrictions will preclude: (a) overnight camping, (b) off-road motorized vehicle travel, (c) discharging firearms and (d) campfires. The Forest Service will monitor these restrictions over time, and may revise the restrictions as future conditions and public use patterns warrant. (See EA, Appendix A, ATI)

Public Access Provisions

In developing the Proposed Action, the Forest Service made a concerted effort to provide for reasonable, uncontested public and administrative access to the consolidated NFS lands in the Brackett Creek area. Also, SMR and the Forest Service developed the exchange to provide for continued private road access to the SMR lands following an exchange and donation.

SMR reserve road easement: In the deeds to the U.S. for the non-federal lands, SMR will reserve a non-exclusive 60 foot wide road right-of-way easement for access and buried utilities on two existing roads, Central Camp Road #6607 (0.5 miles), and Central Camp South Spur Road #6607A (0.2 miles), in Section 5. Both roads to be reserved across NFS land would be managed in accordance with federal regulations.

Forest Service grant road easement to SMR for Central Camp Road # 6607: The Forest Service will grant an easement (60 feet in width) across NFS lands for SMR's use of existing Road #6607 across N1/2N1/2 Section 8, T1N, R7E. The approximate length of this easement grant is 0.1 mile. As described above, SMR will reserve an easement on existing Road #6607 across Section 5 (Tract 2). These easements will provide road access to SMR land following an exchange. Road #6607 is seasonally closed by the Forest Service by a locked gate. SMR will have access to its property when the road is closed to public vehicle use.

The Forest Service and SMR have also agreed (in ATI Amendment #3) that since SMR currently has road access to its land in Section 5 located north of the Brackett Creek County Road and east of Highway 86, no additional road access across NFS Section 8 is needed.

Forest Service retain rights to two roads: In the exchange, the Forest Service will retain all rights and jurisdiction on two existing Forest Service system roads that now provide public and administrative access to NFS lands:

1. South Fork Brackett Road No. 631. This road extends south and west from Highway 86, approximately 1.2 miles across NFS land in Section 8, 0.7 mile across SMR land in Section 7, and then 1.0 mile across NFS land in Section 18, where it ends.
2. Battle Ridge Station Road No. 326. This road extends northwest from Highway 86, approximately 0.2 mile across SMR land in Section 5, and then 0.2 mile across NFS land in Section 32, where it ends at the Battle Ridge Station and rental cabin.

Forest Service terminate road easements for two roads, provided that SMR first replace both roads with in-kind facilities: In the exchange, the Forest Service will terminate its easements across SMR lands for segments of two existing Forest Service roads that currently provide public and administrative access:

1. Central Camp Road No. 6607. This road extends northwest from Highway 86, approximately 0.6 mile across SMR land in Section 5, 0.5 mile across NFS land in Section 6, then 1.4 mile across SMR land in Section 6 and Section 31, before crossing NFS land in Section 36, where it ends. The U.S. will terminate easements for the segments of road across SMR land in Sections 5, 6 and 31.
2. Middle Fork Road No. 6948. This road extends southwest from the Central Camp Road #6607 in Section 6, approximately 0.8 mile across NFS land in Section 6, then 0.3 mile across SMR land in Section 7, before crossing NFS land in Section 12, where it ends. The U.S. will terminate easements for the segment of road across SMR land in Section 7.

The Forest Service will terminate the cited easements only after SMR, at its sole expense, replaces these two access roads by constructing, reconstructing and improving two replacement roads as described in detail below, in accordance with Forest Service specifications:

1. North Fork Brackett Creek Road #6607 and Trailhead:
 - To replace Central Camp Road #6607 across SMR lands, SMR will build the North Fork Brackett Creek Road #6607 to Forest Service specifications. Following the exchange, replacement Road #6607 and trailhead will be located entirely on NFS lands.
 - Replacement Road #6607 will begin at Hwy 86, across from Battle Ridge Campground, and extend westerly across portions of Section 32 and Section 31 to Section 36, crossing North Fork Brackett Creek and connecting to existing Road #6607. A 0.4-mile portion of the road will follow an old roadbed. Total length of Road #6607 will be 2.7 miles.
 - The first 0.1-mile segment of Road #6607 will be 14' wide with 4" crushed aggregate surfacing and a ditch. It will terminate at a 10-car capacity, graveled trailhead (parking area) in Section 32. The remaining 2.6 miles will be 12' wide with native surfacing (no gravel), without a ditch. The road beyond the trailhead will be gated with appropriate signing. The Forest Service will install the gate and signs.
 - Replacement Road #6607 will be managed essentially the same as existing Road #6607. Beyond the trailhead, it will be managed as seasonally closed to vehicular access except snowmobiles during winter. Snowmobiles and grooming will be allowed on this road during winter.
2. South Fork Brackett Creek Road #631 and Road #631A:
 - To replace Middle Fork Brackett Creek Road #6948 across SMR lands, SMR will extend and improve the South Fork Brackett Creek Road #631 and #631A to Forest Service specifications. Following the exchange, replacement Road #631/631A will be located entirely on NFS lands.

- Existing South Fork Brackett Road #631 will be improved from its junction with Hwy 86 in Section 8, southwesterly 1.8 miles to the switchback in Section 7. At this point, new Road #631A will begin and extend westerly, generally following an old road that ties to Road #6948 in Section 12. Total length of Road #631/631A will be 3.6 miles (1.8 miles for Road #631 plus 1.8 miles for Road #631A).
- Road #631 (1.8 miles) will be 14' wide with a crushed aggregate gravel surface and a ditch. Road #631A (1.8 miles) will be 12' wide with native surface and a ditch.
- Replacement Roads #631/631A will be managed essentially the same as existing Road #631. It will be seasonally closed to vehicular use, including closed to snowmobiles, during fall and winter.

The Forest Service will install appropriate signs for Roads 631/631A.

SMR, will at its sole expense, construct these two replacement road facilities to Forest Service specifications after the parties enter into a binding Exchange Agreement, and prior to closing the exchange/donation.

Grazing Allotments:

1. Brackett Creek Sheep and Goat Allotment No. 610 (affects federal land in Section 6). This is a temporary annual permit held by H. Allen Woosley, Allen "Lyle" Woosley and Judith Fraser. This permit will be cancelled when the federal land in Section 6 is exchanged. The Forest Service has notified the permittees of the proposed exchange and of potential permit cancellation.
2. Battle Ridge Cattle & Horse Allotment No. 604 (affects federal land in Section 20). This is a term permit held by H. Allen Woosley, Allen "Lyle" Woosley and Judith Fraser. The Forest Service notified the permittees of the exchange in writing. By letter of October 22, 2002, Lyle Woosley elected to retain the grazing privileges in Section 20 for two years from the date of notification. After the two year time period, this term permit will be cancelled.

Wetlands, Floodplains, Yellowstone Cutthroat Trout and Amphibian Habitat:

The exchange and donation will create a net gain of approximately 6.6 acres of wetlands under federal protection guidelines. The U.S. will acquire approximately 12.7 acres of wetlands. Approximately 6.1 acres of wetlands will be conveyed to SMR. The exchange and donation will also create a net gain of approximately 2.1 acres of floodplains under federal protection guidelines. The U.S. will acquire approximately 4.4 acres of floodplain from SMR, and convey approximately 2.3 acres of floodplain to SMR.

To ensure future protection of Yellowstone cutthroat trout, boreal toad and leopard frog habitat, and as a condition of the exchange, the riparian areas on the federal land in Section 6 (North Fork and Middle Fork Brackett Creek) will be protected by permanent deed restriction. Protected areas will be 100 feet wide on each side of the streams, overlaying the floodplain/wetland areas. Approximately 20.1 acres in total would be protected. The Forest Service, and its authorized representatives, will have the right to monitor and inspect for violations of this restriction.

The proposed action will protect, by restrictive covenant, the 4075 ft, 300 ft and 700 ft conveyed sections of Middle Fork Brackett Creek, North Fork Brackett Creek and Cache Creek, with 100 ft buffers on either side of respective stream channels (Sections 6 and 20), by restricting activities to retain existing floodplain and wetland character, by retaining Federal, State, and local regulations, and by allowing access to Forest Service personnel to monitor and manage these areas, through a binding covenant. With this restriction, the high fish and amphibian values of conveyed lands are preserved. Additional high quality habitats will be acquired and protected in section 5; land acquired in other parcels will provide additional watershed and amphibian habitat protection.

Cultural Site:

A known cultural resource site on the federal land will be protected by a permanent deed restriction. The Forest Service and its authorized representatives will reserve the right to monitor and inspect for violations of this restriction including:

The right to enter, survey, examine, excavate and enforce applicable archeological laws, remove artifacts and other cultural resource information or material from portions of the lands so granted, more particularly described as: Cultural Resource Site No. 24GA119. The United States shall fully rehabilitate the extent of the archeological excavations undertaken.

SMR hereby covenants on behalf of itself, its successors and assigns at all times to the Forest Service to maintain and preserve Cultural Resource Site No. 24GA119 as follows:

(a) No construction, alteration or disturbance of the ground surface, other than grazing, where permitted, or any other thing shall be undertaken or permitted to be undertaken on Cultural Resource Site No. 24GA119 which would affect the integrity or the archeological value of the site, without the express prior written permission of the Forest Service, signed by a fully authorized representative thereof;

(b) The Forest Service shall be permitted at all reasonable times to inspect Cultural Resource Site No. 24GA119 in order to ascertain if the above conditions are being met. The right of ingress and egress to allow for this inspection is reserved to the United States;

(c) This covenant is binding upon SMR, its successors and assigns until the reservation and covenant are released by the Forest Service. Restrictions, stipulations and covenants contained herein shall be inserted verbatim or by express reference in any deed or other legal instrument by which SMR. divests itself of either the fee simple title or any other lesser estate, in Cultural Resource Site No. 24GA119 or any part thereof;

(d) The failure of the Forest Service to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

Execution of this covenant shall constitute conclusive evidence that SMR agrees to be bound by the foregoing conditions and restrictions and to perform obligations herein set forth.

Water Rights:

Forest Service water rights 43A-W-066-166 (instream domestic campground supply for a campground that was never built) and 43A-W-060486-00 (stock water) will be transferred to SMR.

Ditches and Canals:

The United States will reserve the right for any ditches and canals constructed under United States authority pursuant to the Act of August 30, 1890, for all land conveyed to SMR.

DETERMINATION OF PUBLIC INTEREST

As required in 36 CFR 254.3(b), I have determined the public interest is well served through this exchange as described in Alternative 2.

The resource values and public objectives served by the acquired non-federal lands equal or exceed the resource values and the public objectives served by the conveyed federal lands. The specific purpose of this land exchange is to consolidate the intermingled land holdings. SMR recently purchased these private lands. Several national forest access routes pass through these private lands. These access routes provide recreational access into the backcountry in the Bridger Mountain Range. In addition, the previous landowners allowed the public to use their private lands off of these access routes. The exchange would resolve uncertainties concerning public and administrative access. In addition to resolving access concerns, the exchange will establish a protected area or reservation along Brackett Creek. The reservation is to prevent future development along the creek to protect genetically pure Yellowstone cutthroat trout population. The Regional Forester has classified this species as a sensitive species.

The intended use of the federal lands to be conveyed will not conflict with established management objectives on other federal lands in the area.

Current landownership in the analysis area (Brackett Creek and Cache Creek drainages) consists of intermingled NFS and private lands. This land pattern was created through grants of alternating (checkerboard) sections of federal land to the railroads in the 1800's and early 1900's.

The intermingled public and private lands in the analysis area are relatively difficult to manage effectively, both for the Forest Service and for the private landowners.

The Forest Service manages the NFS lands in the Brackett area for multiple purposes under the Forest Plan. Plan goals and objectives include providing for healthy forests, wildlife and fish habitat, dispersed recreation, quality water, livestock grazing and timber production on NFS lands. Fire protection and management of the road and trail system in the area are also important considerations.

The Proposed Action would create a consolidated land ownership configuration that tends to improve long-term management effectiveness in most program areas, including fire protection, timber management, livestock grazing, and management of fish and wildlife habitat.

That is particularly the case in the Brackett Creek and Cache Creek area, since it is anticipated that the SMR lands will change from traditional ranching and timber uses, to private recreational and residential uses.

DECISION CRITERIA

The criteria for making my decision were the three key issues identified in scoping and addressed by the environmental analysis, as discussed above, consideration of how well each alternative met the purpose and need for action, and a review of the public comment on the EA (June 2004).

RATIONALE FOR THE DECISION

This decision is based on the EA for the Brackett Creek Land Exchange, Donation and Relocation of Roads (June 2004), and a review of public comment. I reviewed the alternatives described in the EA, and considered how they would meet the purpose and need and respond to the issues for this analysis. I also reviewed the alternatives not given detailed study in the EA, which helped me decide the interdisciplinary team had considered a thorough and complete range of alternatives.

I reviewed all timely public comment, from the original scoping and the EA. I found no new issues or concerns were raised. All points brought forth in comments were considered in the EA.

Other Considerations

I reviewed the discussion in the EA concerning administrative costs, which allowed me to compare the direct administrative costs of concluding the proposed land exchange with the costs of no action. I also reviewed the Forest Service Land Appraisal Reports to understand the land values and how they were determined.

CONSISTENCY WITH OTHER LAWS, REGULATION, OR POLICY

To the best of my knowledge, this decision is in compliance with all applicable laws, regulations, and policies. I find that this decision is consistent with the Goals, Objectives, and Standards listed in the 1987 Forest Plan. It incorporates all applicable Forest Plan forest-wide standards and management area prescriptions. NFS lands to be conveyed are within Management Area 8. These lands are primarily suitable for timber management. Private lands to be acquired would generally consist of MA 8 and MA 12. MA 12 consists of lands suitable for big game summer and winter range and dispersed recreation.

This decision is consistent with the following Forest Plan goals and objectives:

- Maintain and enhance fish habitat to provide for an increased fish population (p. II-1, A (6)).
- Provide a road and trail management program that is responsive to resource management needs (p. II-1, A (11)).
- Manage national forest lands in their present ownership patterns except where opportunities arise to accomplish specific objectives (p. II-2, A (19)).
- Land ownership adjustments will be made when analysis shows them to be advantageous to the public (p. II-6, k).
- Exchange, donation, purchase, and easement authority will be used to meet ownership adjustment needs (p. II-25, #12 (3)).
- In land-for-land exchanges, national forest lands will be considered for disposal under the following categories: Isolated or detached parcels may be disposed of where further

consolidation of national forest lands is not anticipated and the exchange would provide a greater public value of purpose (p. II-26, #12 (5a)).

- The Forest needs to acquire and develop more access to the national forest to improve management of resources and increase opportunity for recreational uses (p. V-22, #12 (a)).

I reviewed the Biological Evaluations for threatened, endangered, and sensitive species and found the following:

- Implementation of the proposed action will have **No effect** on the bald eagle, grizzly bear, Canada Lynx, and gray wolf.
- The proposed action will have **no impact** on peregrine falcon, trumpeter swan, harlequin duck, western big-eared bat, wolverine, boreal toad, and the northern leopard frog.
- The proposed action **may impact individuals or (foraging) habitat, but will not likely contribute to a trend towards Federal listing or cause a loss of viability to the population or species** for northern goshawk, flammulated owls, and black-backed woodpeckers.
- Based upon sensitive plant surveys completed the action will have **no impact** on sensitive plant species.
- Genetically pure Yellowstone cutthroat trout are present in the project area. Genetic introgression is believed to be an important cause for decline of Yellowstone cutthroat trout population in Montana (Varley and Gresswell 1988). Fausch (1988, 1989) concluded that the persistence of Yellowstone cutthroat trout is jeopardized in streams containing brook or brown trout, because of competition. The proposed action is expected to maintain riparian wetland habitats within conveyed lands and will result in protection of acquired lands. Therefore, the action may impact individual Yellowstone cutthroat during road construction activities (placing crossings), but will not impact populations of these species.
- The northern leopard frog (*Rana pipiens*) and the western toad (*Bufo boreas boreas*) are Region 1 sensitive amphibian species. The northern leopard frog is widely distributed at lower elevations, but is not documented in the project area. Western toads are documented as present in the Brackett Creek drainage, and are likely present in the other drainages as well (Atkinson and Atkinson 2003). The proposed action is expected to maintain riparian wetland habitats within conveyed lands and will result in protection of acquired lands. Amphibian surveys prior to road construction activities will ensure that those activities do not destroy important amphibian breeding and rearing habitats. Therefore, the action may impact individuals of boreal toad and northern leopard frogs during road construction activities, but will not impact populations of these species.

Within the EA, I find documentation concerning floodplains and wetlands in compliance with Executive Orders 11988 and 11990 (See EA Chapter III, pg 7 and Chapter IV, pg 16). The exchange and donation will create a net gain of approximately 6.6 acres of wetlands under federal protection guidelines. The U.S. will acquire approximately 12.7 acres of wetlands. Approximately 6.1 acres of wetlands will be conveyed to SMR. The exchange and donation will also create a net gain of approximately 2.1 acres of floodplains under federal protection guidelines. The U.S. will acquire approximately 4.4 acres of floodplain from SMR, and convey approximately 2.3 acres of floodplain to SMR. A permanent deed restriction for riparian area protection will also be placed on

20.1 acres of lands conveyed to SMR (100 feet on either side of Middle and North Fork Brackett Creek).

The Forest Archaeologist examined the NFS lands. No known cultural resource sites would be disturbed by construction activities associated with the replacement roads. No tribal treaty rights exist in the analysis area. The examination revealed no new cultural resource sites. The existence of a previously located cultural site on NFS land to be conveyed to SMR was reconfirmed. To protect this site, the Forest Service and SMR have agreed to impose a deed restriction, to prevent any alteration or disturbance of the site without agency permission. The Forest Service will retain rights to inspect the site and to survey, examine, excavate, remove materials, and rehabilitate the site. Under terms of a 1995 programmatic agreement with the Montana State Historic Preservation Officer (SHPO), the Forest Archaeologist has recommended that the Proposed Action may proceed.

ENVIRONMENTAL JUSTICE

I reviewed the project for compliance with the Environmental Justice Executive Order. Based on the EA, I find this decision will not adversely affect human health or minority and low-income populations. There has been ample opportunity for participation in the analysis process, as documented in the public involvement records in the project record, and the implementation of this project will not subject anyone to discrimination because of race, color, or national origin.

FINDING OF NO SIGNIFICANT IMPACT

In reviewing the analysis within the EA, the Biological Evaluations, and Administrative Record, I find the implementation of Alternative 2 would result in no significant impact. I have reviewed the provision for 40 CFR 1508.27(b) in terms of project context and intensity relationships in determining project significance, and it is my decision that an Environmental Impact statement (EIS) is not necessary and will not be prepared for this project. My rationale for not preparing an EIS includes:

Context

The setting of this project is localized, with implications only for the immediate area. The actions involved in this decision are consistent with management direction contained in the Forest Plan, as amended.

Intensity

1. **Consideration of both beneficial and adverse impacts.** This decision will meet the purpose and need, and the desired condition for each of the issues identified in Chapter 1 of the EA, as well as meet the intent of Goals and Objectives outlined in the Gallatin Forest Plan. Beneficial and adverse impacts of this decision are addressed in the EA. No significant impacts were identified.
2. **Consideration of the effects on public health and safety.** This decision will have no significant impact or unacceptable effect on public health or safety. During scoping, there were no issues related to public health or safety. There are no known hazardous substances on the federal and non-federal lands.

3. **Consideration of unique characteristics of the area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.** A cultural resource site on federal land identified for exchange will be protected by permanent deed restriction. There are no park lands, or prime forest or farm lands, and the area is not being considered for Wild and Scenic River designation.

The area contains wetlands and floodplains. The exchange and donation will create a net gain of approximately 6.6 acres of wetlands under federal protection guidelines. The U.S. will acquire approximately 12.7 acres of wetlands. Approximately 6.1 acres of wetlands will be conveyed to SMR. The exchange and donation will also create a net gain of approximately 2.1 acres of floodplains under federal protection guidelines. The U.S. will acquire approximately 4.4 acres of floodplain from SMR, and convey approximately 2.3 acres of floodplain to SMR.

A permanent deed restriction for riparian area protection will also be placed on 20.1 acres of lands conveyed to SMR (100 feet on either side of Middle and North Fork Brackett Creek).

The lands were examined for sensitive plants, and none were found. The biological evaluation for wildlife indicated that both the federal and non-federal lands contain valuable wildlife habitat, but implementation of the project will have **No effect** on the bald eagle, grizzly bear, Canada Lynx, and gray wolf. The proposed action will have **no impact** on peregrine falcon, trumpeter swan, harlequin duck, western big-eared bat, wolverine, boreal toad, and the northern leopard frog. The proposed action **may impact individuals or (foraging) habitat, but will not likely contribute to a trend towards Federal listing or cause a loss of viability to the population or species** for northern goshawk, flammulated owls, and black-backed woodpeckers. Based upon sensitive plant surveys completed the action will have **no impact** on sensitive plant species.

The Yellowstone cutthroat trout (*Oncorhynchus clarki*) is a Forest Service Region 1 sensitive fish species that historically inhabited the upper Yellowstone River drainage (Varley and Gresswell 1988). Thus, the Brackett and Cache Creek drainages classify as historical habitat for this species. Mitigation such as conservation easements, alternative exchange sites not containing Yellowstone cutthroat populations, or exclusion of the Brackett, Fairy, and Cache Creek riparian areas from the exchange as described by Story (9/96) will protect the aquatic community.

4. **Consideration of the degree of controversy associated with the effects.** Based on public comment and interdisciplinary analysis of the proposed action and alternatives, the effects on the human environment are not likely to be highly controversial.
5. **Consideration of the uncertainty of the effects, or unique or unknown risks.** The effect of the proposed action will be similar to the effect of other land exchanges that have been completed. There are no extraordinary circumstances in this action that would make the effects highly uncertain or involve unique or unknown risks. The comments on the EA did not reveal any new issues that were not considered in the EA.
6. **Consideration of whether the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.** This is a project-level decision. The implementation of this decision is not precedent setting,

and does not represent a precedent for any future decision. Any other proposals for this area will be subject to full NEPA disclosure.

7. **Consideration of cumulative impacts.** A cumulative effects analysis was conducted for this proposal. There are no known significant cumulative effects between this project and other projects implemented or planned in areas separated from the affected area of this project. Other known and reasonably foreseeable activities were considered.
8. **Consideration of the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.** The Forest Archaeologist examined the NFS lands. No known cultural resource sites would be disturbed by construction activities associated with the replacement roads. No tribal treaty rights exist in the analysis area. The examination revealed no new cultural resource sites. The existence of a previously located cultural site on NFS land to be conveyed to SMR was reconfirmed. To protect this site, the Forest Service and SMR have agreed to impose a deed restriction, to prevent any alteration or disturbance of the site without agency permission. The Forest Service will retain rights to inspect the site and to survey, examine, excavate, remove materials, and rehabilitate the site. Under terms of a 1995 programmatic agreement with the Montana State Historic Preservation Officer (SHPO), the Forest Archaeologist has recommended that the Proposed Action may proceed.
9. **Consideration of adverse effects on endangered or threatened species or their critical habitat, as determined under the Endangered Species Act of 1973.** As noted in #3, above, threatened, endangered, or sensitive wildlife or plant populations within the project area will not be adversely affected by this decision (EA, Biological Evaluations).
10. **Consideration of Federal, State, or local law or requirements imposed for the protection of the environment.** As discussed elsewhere in this decision, this land exchange is in compliance with all applicable laws, regulations, and policies, and will not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. The proposed action is in compliance with the Gallatin Forest Land and Resource Management Plans of 1987, Endangered Species Act, Departmental Regulation 9500-3 for prime forest and farmlands, and Executive Orders for invasive species, environmental justice, and protection of floodplains and wetlands.

IMPLEMENTATION OF DECISION

If no appeal is received, implementation of this decision may occur on, but not before, five (5) business days from the close of the appeal period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to 36 CFR 215.11. A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the *Missoulian*, *Billings Gazette*, *Great Falls Tribune*. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the

newspaper of record is the *exclusive* means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be submitted to:

Regular mail:

USDA Forest Service
Stop 1104
1400 Independence Ave., SW
Washington, DC 20250-1104

FedEx:

USDA Forest Service
Ecosystem Management Coordination Staff
201 14th Street, SW
3rd Floor, Central Wing
Washington, DC 20024
Phone: 202-205-0895

Electronic appeals must be submitted to:

appeals-chief@fs.fed.us

In electronic appeals, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why my decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;
- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C;
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

CONTACTS

Detailed records of the environmental analysis are available for public review at the Bozeman Ranger District Office, 3710 Fallon Street, Suite C, Bozeman MT 59718. For additional information concerning this decision contact Nancy Halstrom, Interdisciplinary Team Leader, at the Bozeman Ranger District Office; telephone (406) 522-2535. For additional information on the

